<u>REMARKS</u>

The present application was filed on November 26, 2003 with claims 1-20. Claims 1-20 are currently pending in the application. Claims 1, 19 and 20 are the independent claims.

Claims 1-19 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 7,120,153 (hereinafter "Anconetani").

Claim 20 is rejected under 35 U.S.C. §103(a) as being unpatentable over Anconetani in view of U.S. Patent No. 7,085,279 (hereinafter "Kumar").

In this response, submitted with a Notice of Appeal, Applicants traverse the §103(a) rejections, and respectfully request reconsideration of the present application.

Applicants submit that the Examiner has failed to establish a proper *prima facie* case of obviousness in the §103(a) rejection of claims 1-19 over Anconetani, in that the cited reference fails to teach or suggest all the limitations of these claims, and in that no cogent motivation has been identified for modifying the reference teachings to reach the claimed invention. Moreover, even if it is assumed for purposes of argument that a *prima facie* case has been established, there are teachings in the Anconetani reference that overcome any such *prima facie* case by directly teaching away from the claimed invention.

Independent claim 1 includes a limitation wherein the second table is configurable to include a plurality of entries corresponding to transmission elements for which data blocks are to be scheduled in accordance with at least a second scheduling algorithm different than the first scheduling algorithm, where association of a given one of the transmission elements with a particular one of the entries establishes a scheduling rate for that transmission element. Furthermore, the scheduler maintains a second table pointer identifying a current one of the second table entries as being eligible for transmission.

In an illustrative embodiment described in conjunction with FIGS. 3, 4 and 5 of the drawings, the first and second tables of claim 1 are shown, by way of example, as FIFO lists 310 and dynamic calendar table 312. A given queue or other transmission element having at least one data block to transmit can be scheduled either in one of the FIFO lists or in the dynamic calendar table. Thus, at a particular point in time, the given queue may be empty, that is, have no data block to transmit, or may be scheduled via one of the FIFO lists or the dynamic calendar table. This advantageously allows multiple scheduling algorithms to be supported in an efficient and flexible manner. For example, the FIFO lists 310 may be used to implement a weighted fair

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queuing algorithm, while the dynamic calendar table 312 may be used to implement a constant bit rate or variable bit rate scheduling algorithm. See the specification at, for example, page 9, line 17, to page 12, line 13.

At page 7, last paragraph, of the present Office Action, the Examiner argues, with reference to FIG. 11 of Anconetani, that context table 202 is configured to use a second scheduling algorithm, context logic 204, which is different from the first scheduling algorithm, calendar logic 208. Applicants respectfully disagree with the Examiner's characterization of Anconetani. Anconetani at column 14, lines 28-32, expressly indicates that the Calendar Schedule process of calendar logic 208 "is simply a response to a calendar schedule request from Context Logic 202," rather than being a different scheduling algorithm. Accordingly, Anconetani fails to teach or suggest the limitations of claim 1 directed to at least a second scheduling algorithm different than the first scheduling algorithm.

As noted above, claim 1 recites a limitation wherein the second table is configurable to include a plurality of entries corresponding to transmission elements for which data blocks are to be scheduled. Here, the Examiner argues that the entries of the context table in Anconetani "correspond or relate to transmission elements for data blocks to be transmitted." Applicants respectfully disagree and note that Anconetani at column 9, lines 57-60, clearly indicates that the context table stores context information for all connections assigned to cell scheduler 102, even connections which are idle (i.e., those for which no data blocks are to be scheduled). As such, Anconetani also fails to teach or suggest that association of a given one of the transmission elements with a particular one of the entries establishes a scheduling rate for that transmission element. Rather, context table 202 thus appears to provide what is generally referred to in the art as traffic shaping information. See Anconetani at, for example, column 7, lines 33-44, and the present specification at, for example, page 9, lines 7-16.

Applicants further traverse the use of Official Notice with regard to the recited first and second pointers. The recited pointers are particular types of pointers, not simply pointers in general, and the use of Official Notice to attempt to meet these claim elements is believed to be inappropriate. For example, the recited first table pointer identifies one of the first and second lists of entries of the first table as having priority over the other of the first and second lists of entries. The recited second table pointer identifies a current one of the second table entries as being eligible for transmission. The Official Notice relates to the general use of pointers "to

identify the packets ready for transmission" and thus fails to meet the <u>particular</u> recited first and second table pointers of claim 1. The reference relied upon in the present Office Action at page 8, last paragraph, for "the use of pointers in scheduling," likewise fails to teach or suggest the <u>particular</u> recited first and second table pointers of claim 1.

Accordingly, it is believed that the teachings of the Anconetani reference fail to meet the limitations of independent claim 1.

Furthermore, it is believed that insufficient objective evidence of motivation to modify Anconetani has been identified by the Examiner. The Examiner at page 3, third paragraph, of the present Office Action argues that one skilled in the art would be motivated to modify Anconetani to reach the particular limitations of claim 1 because "the use of pointers is known to provide smaller and faster algorithm execution in the memory of devices."

Applicants respectfully submit that the proffered statement fails to provide sufficient objective motivation and is instead a conclusory statement of the sort rejected by both the Federal Circuit and the U.S. Supreme Court. See <u>KSR v. Teleflex</u>, 127 S. Ct. 1727, 1741 (2007), quoting <u>In re Kahn</u>, 441 F. 3d 977, 988 (Fed. Cir. 2006) ("[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness."). As noted above, the <u>specific</u> pointer limitations of claim 1 are not met by Anconetani, and the proffered conclusory statement regarding the <u>general</u> use of pointers in memory fails to supplement this fundamental deficiency of Anconetani as applied to claim 1.
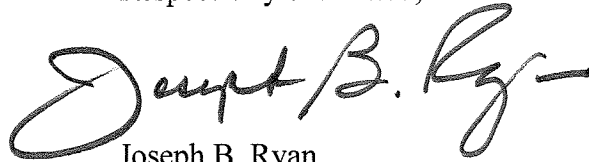
Independent claim 1 is therefore believed to be patentable over Anconetani.

Independent claims 19 and 20 are believed patentable for reasons similar to those outlined above with regard to claim 1. The Kumar reference as applied to claim 20 fails to supplement the above-identified fundamental deficiencies of the Anconetani reference.

Dependent claims 2-18 are believed allowable for at least the reasons identified above with regard to claim 1, and are also believed to define separately-patentable subject matter.

In view of the foregoing, claims 1-20 are believed to be in condition for allowance and withdrawal of the present §103(a) rejections. As indicated previously, a Notice of Appeal is submitted herewith.

Respectfully submitted,

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Enclosure(s): Notice of Appeal